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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 227

HENRY P. LYONS, PETITIONER

vs.

WILLIAM R. BAKER, EDWARD BRUCE JOSE, HENRY CABRE, JOHN LAW, JR., AND GEORGE CASPER, RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the District Court —R 21 & 22 was not reported. The opinion of the Circuit Court of Appeals for the Fifth Circuit, is shown in R-29 & 30, and judgment of Circuit Court, is shown in R-30 & 31, and Order denying rehearing, is shown in R-34. The opinion is reported in 180 Federal, 2nd, 893.

JURISDICTION

The Supreme Court of the United States may consider the petition under Title 28, Section 1234, U. S. Code.

QUESTION PRESENTED

The Respondents do not agree that the summary statement of matters involved and questions presented by Petitioner is correct.

The Respondents submit that the questions determined by the Lower Courts to be considered by this Court are as follows:

FIRST QUESTION

DOES THE FEDERAL COURT HAVE JURISDICTION IN A CASE WHEREIN THE APPELLANT CLAIMED TO HAVE BEEN DEPRIVED OF HIS CIVIL RIGHTS BY A REPORT OF A GRAND JURY CREATED UNDER THE LAWS OF THE STATE OF FLORIDA?

SECOND QUESTION

ARE GRAND JURORS WHO ARE DULY CALLED, SWORN, IMPANELED AND CHARGED UNDER THE LAWS OF THE STATE OF FLORIDA, CIVILLY LIABLE IN AN ACTION FOR CONSPIRACY FOR THEIR FINDINGS, WHICH WERE PRESENTED TO THE JUDGE BY A "PRESENTMENT OF A GRAND JURY" WHICH PRESENTMENT WAS ORDERED FILED BY JUDGE OF THE CIRCUIT COURT OF MARTIN COUNTY, FLORIDA?

STATUTES AND REGULATIONS INVOLVED

The Petitioner has attempted to invoke the following sections of the U.S.C.A., to wit:

Title 8, Secs. 41 to 48

Title 28, Sec. 1343 (62 Stat. 932, Sec. 1)

and has also attempted to invoke the following portions of the United States Constitution, to wit:

Article 1, Sec. 9.

Article 3, Sec. 2.

Article 4, Sec. 2.

14th Amendment to Constitution

The respondents submit that the facts alleged in the original complaint do not bring the action within the provisions of the above statutes.

STATEMENT

The summary statement of matters involved as set forth in the Petition for Writ of Certiorari before this Court, pages 2 and 3, is inaccurate.

It is submitted that a correct statement of the issues is as follows:

The Complainant in the United States District Court, Henry P. Lyons, who is not a colored person, is the petitioner here, and the several named defendants, to wit, William R. Baker, Edward Bruce Jose, Henry Cabre, John Law, Jr. and George Casper, the respondents, are likewise not colored persons.

The complaint which appears in the record, pages 2 to 8 incl. shows that the cause arose as a result of the presentment of the grand jury to the Circuit Judge, of the State of Florida. This petition is before this Court because of a judgment dismissing the action entered by the Circuit Court of Appeals of the Fifth Circuit for want of Federal jurisdiction—See record, pages 30 and 31. Order denying rehearing, Record page 34.

The grand jury was summoned, sworn and convened in the Circuit Court of the Ninth Judicial Circuit of Florida, in and for Martin County, in the January term of 1949, the presentment appears on Record pages 6, 7, and 8. The respondents here are five members of the aforesaid grand jury which consisted of eighteen persons. Based upon his personal assumption and conclusions, the complainant Lyons vaguely alleges that the named respondents conspired to harm and injure him, deprive him of his civil rights, and deny him due process of law through the presentment of the aforesaid grand jury, which presentment was submitted to the Court. Said complaint affirmatively alleges that the presentment was published at the instruction of the Judge of the Circuit Court, but the fact is the presentment was only ordered filed by the Circuit Judge of Martin County in the records at the Courthouse.

ARGUMENT

The respondents submit that the fact alleged in the complaint do not bring the action within the provisions of

statutes and sections of the United States Constitution relied upon by the petitioner.

I.

THE DECISION BELOW IS CLEARLY CORRECT

The first question to be considered in this case is whether or not the Federal Court had jurisdiction. This point was clearly presented to the United States District Court and clearly presented to the Circuit Court of Appeals as indicated by the first question of law as hereinabove set forth in this brief. The Circuit Court of Appeals answered the question squarely and positively, in its Per Curiam opinion, pages 29 and 30 of the Record, stated as follows:

> "We agree with the appellees that no case of federal jurisdiction was made out and that the judgment of dismissal should be affirmed, not upon the merits, but for want of federal jurisdiction."

The petitioner claims that the Federal Court has jurisdiction, and bases the jurisdiction upon the following parts of the Constitution of the United States:

> Article 1, Sec. 9; Article 3, Sec. 2; Article 4, Sec. 2, and the Fourteenth Amendment.
> and also the following Laws of the United States: Title 8, Sec. 41, 42, 43, 47, 48, and Title 28, Sec. 41, Sub. Sections 12 and 14, set out in the complaint in Paragraph 2, Page 2 of the Record.

Briefly it can be said that the Statutes and Sections of the Constitution mentioned hereinabove do not support the petitioner's claim for Federal Jurisdiction.

Article 1, Section 9 of the Constitution is in substance a provision of the Constitution pertaining to taxes, and such other matters wholly irrelevant and foreign to the issues in this case.

Article 3, Section 2 of the Constitution is with reference to the judicial power in certain cases, and in particular it refers to cases between Ambassadors, etc. and is likewise foreign to the issues in this case.

Article 4, Section 2 provides that the citizens of each state shall be entitled to all privileges and immunities of citizens of several states. Said section is likewise wholly inapplicable to the issues in this cause.

The various provisions of the Federal Code relied upon by the Petitioner are inapplicable. Title 8, Sec. 41 and 42 guarantees to all persons the same rights as are enjoyed by white persons; Section 43 provides the remedy of civil action for the deprivation of such rights, etc.

Section 47 involves conspiracy to prevent an officer from performing his duties. Section 48 provides for an action for neglect to prevent the wrong referred to in the preceding section 47. All of these sections are wholly inapplicable to the situation before this Court.

Title 28, Section 41 of the U. S. Code, Sub-section (12) provides that the Federal Courts have jurisdiction for the violation of civil rights delineated in Sec. 47 of Title 3; Sub-section (14) for deprivation of civil rights under law, statute, ordinance, regulation, custom or usage of any state. It has not been shown by any of the pleadings in this case that a violation of any of the above mentioned civil rights are involved, or that the civil rights of petitioner have been impaired or in any way threatened.

The Fourteenth Amendment to the Constitution has no bearing upon the right of the petitioner to bring suit in the Federal Court, such as this.

In conclusion, with reference to this question of jurisdiction, it is respectfully submitted that no property or freedom has been taken from the appellant; he has not been deprived of his liberty; his right to hold public office has not been interfered with, and it is submitted that the Federal Court is wholly without jurisdiction, and that the decision of the Circuit Court of Appeals is correct.

II.

THERE IS NO QUESTION OF FEDERAL LAW

As hereinabove argued, the Respondents take the firm position that the Federal Court does not have jurisdiction of this subject matter. However, assuming that jurisdictional prerequisites exist, the complaint fails to state cause of action. It is submitted that grand jurors who are duly called, sworn,

impaneled and charged under the Laws of the State of Florida, are not civilly liable for an action of conspiracy. It is likewise pointed out that such action as taken by the grand jury of Martin County was their own independent action based upon the Constitution and the Laws of the State of Florida, there is no Federal Constitutional question involved; and there is no federal statute involved. The petitioner has not been deprived of any property, liberty or right to public office.

It is well to be kept in mind, the theory of the petitioner's case is that a conspiracy had been committed against the petitioner.

The alleged cause of action arises from the presentment made by a grand jury consisting of eighteen members, such presentment having been made to the Court after its investigation of matters brought before it for consideration.

38 CJS. Sec. 35, Grand Juries.

REPORT OF JURY

It is the duty of the Grand Jury to report its action on matters investigated by it to the Court or Official authorized to receive it.

> "It is generally the duty of the grand jury to report its action on matters properly investigated by it to the court or authority charged with a duty in connection with the matter reported, notwith-

> standing no indictment is returned, and it has been held that it is the duty of the court and prosecuting attorney to see that such a report is made. The grand jurors, however, must respect any limitation imposed by statute on the kinds of returns, findings, and reports that they may make and the manner in which they shall be made. A grand jury's finding or report is not a verdict or judgment, but amounts at most to an accusation."

The general rule is set forth in 33 American Jurisprudence, page 171, Sec. 178, as follows:

> "Jurors, since they are under a legal duty to act in that capacity, and are more-over deemed to be a part or branch of the Court, come within the absolute rule of impunity and are consequently exempted from responsibility by civil action for the manner in which that duty is performed and even for the motives which influence their conduct."

III.

THERE IS NO CONFLICT OF DECISION

An examination of the authorities relied upon by the Petitioner will disclose that these authorities are far removed from the law involved as to why the U. S. District Court has jurisdiction of this controversy in the first instance. The petitioner argues that since the U. S. District Court did not dismiss the action for want of Federal jurisdiction, that the

Circuit Court of Appeals of the 5th Circuit is without authority to dismiss same upon such ground. This is an elementary question of Federal Law and it has been consistently held that whenever it is brought to the attention of any Federal Court, either by motion of the defendant, or upon the Court's own independent inspection of the record, that Federal jurisdiction does not exist, then in that event it is the duty of that Court to immediately dismiss said cause. (The respondents will not burden the Court with any detailed citations on this general principle of Federal law, however, should the Court wish to pursue this matter further, it is respectfully submitted that the above general statement of law is fully, completely and fairly borne out by the decisions and citations of general authorities, to wit: George W. Green vs. City of Stuart, 91 Fed. 2nd., 603; 113 A.L.R., 560; 35 C.J. Secundum, 923; 30 Fed. Supplement, 643, 645; 36 C.J. Secundum, 202; 91 Fed. 2nd 141; 129 Fed. 2nd. 227; 87 Fed. 2nd. 385, 387.)

It is not a tort action but a suit in the Federal Court for conspiracy. The cases referred to in petitioner's brief are not at all in point; there are no cases that he cites wherein such an action has been maintained in any Federal Court. It has not been set forth in his petition wherein any other Federal Courts have passed on such a proposition of law, and he has not set forth any conflict whatsoever of any decision between any Federal Court, Court of Appeals or any decision of the Supreme Court of the United States that would indicate that such a result and such a case similar

to this has terminated differently than this one has now terminated by the able decision of the United States Court of Appeals for the Fifth Circuit:

The case of Picking vs. Pennsylvania Railroad, 152 Fed. 2nd, 240, is a sample of the petitioner's misconception of the facts applicable. Briefly, the Picking case involves a person who has been arrested and transported from one place to another; who had been put in jail; who had lost his liberty, etc.

The petitioner cites many cases about the rights of a person to hold public office, etc. There is no argument about that proposition of law, except to say that it is not involved in this case, for the records do not disclose that the petitioner ever lost his public office or that his public office was in any way interfered with, by the alleged action of the Grand Jury, nor did the grand jury remove him from office.

Again we submit there is no conflict of decisions whatsoever between any Federal Court or any State Court, as a matter of fact, pertaining to the issues involved in this case.

The Petitioner has seen fit to make reference in his petition and brief to the recent investigation conducted by the Kefauver Committee in Miami, Florida which is entirely extraneous to the issues in this case. The conclusion which he draws from the reference to such Committee hearing, has no parallel here. Matters to which the Petitioner has referred do not appear in the record of this case, and are in no way involved with this litigation.

The respondents do believe that it is material to this case to call to the attention of the Court that the grand jury complained of by the Petitioner, was called largely at the suggestion and instance of the Petitioner; that he appeared before such grand jury as a witness and testified at length and had full opportunity to be heard; and that as a result of hearing the testimony of the Petitioner and a number of other witnesses, the grand jury rendered the presentment complained of which appears on pages 6, 7 and 8 of the transcript of record.

The particular portion of the presentment of the grand jury, to which the petitioner objects appears at the bottom of Page 7 and top of Page 8 of the record.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Received a copy of the above and foregoing brief of Respondents in opposition to the Petition for Writ of Certiorari, this ..... day of August, A. D. 1950.

CARROLL DUNSCOMBE
As Counsel for Petitioner
STUART, FLORIDA

STATE OF FLORIDA

COUNTY OF MARTIN

ss:

I, T. T. Oughterson, after being first duly sworn on oath, depose and say that I am counsel for the respondents in the above styled cause; that on the ..... day of August, A. D. 1950, I did mail to the Honorable John Wattawa, Counsel for the Petitioner in the above styled cause, a copy of the above and foregoing Brief in Opposition to the Petition for Writ of Certiorari, the same being mailed to Mr. John Wattawa, 1317 "F" St., N.W. Washington, D. C. and I further state that there was sufficient postage on said letter to insure delivery of same, together with said brief.

T. T. OUGHTERSON

Sworn to and subscribed before me this ..... day of August, A. D. 1950.

(Notary Seal) RUTH HAM, Notary Public

State of Florida at Large.